

In the Indiana Supreme Court

CAUSE NUMBER: 94S00-0809-MS-

ORDER AMENDING TAX COURT RULES

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Rules 3, 18 and 19 of the *Indiana Tax Court Rules* are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

INDIANA TAX COURT RULES

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Rule 3. Commencement of an action

(A) Appeals from final determinations of the Department of State Revenue. An original tax appeal from a final determination of the Department of State Revenue is commenced by filing a petition in the Tax Court.

(B) Appeals from final determinations of the Indiana Board of Tax Review. An original tax appeal from a final determination of the Indiana Board of Tax Review is commenced by filing a ~~verified~~ petition in the Tax Court. ~~The petition shall set forth the following:~~

- ~~(1) the name and mailing address of the petitioner;~~
- ~~(2) the mailing address of~~ and filing a written notice of appeal with the Indiana Board of Tax Review;
- ~~(3) identification of the final determination of the Indiana Board of Tax Review at issue, together with a copy, summary, or brief description of the final determination;~~
- ~~—— (4) identification of all persons, as defined under IC 4-21.5-1-11, that were parties to any proceeding of the Indiana Board of Tax Review that led to its final determination;~~
- ~~—— (5) specific facts to demonstrate that the petitioner has standing to obtain judicial review of the final determination of the Indiana Board of Tax Review, has exhausted all applicable remedies, has timely filed the petition, and has met any other statutory conditions for the availability of judicial review;~~
- ~~—— (6) specific facts to demonstrate that the petitioner has been prejudiced by one or more grounds which provide the basis for a grant of relief under applicable law;~~
- ~~—— (7) at the election of the petitioner, a request that the Indiana Board of Tax Review prepare a certified copy of the agency record; and~~
- ~~—— (8) a request for relief stating the type and extent of relief requested. The petition shall be verified under Trial Rule 11(B). A sample petition for an original tax appeal from a final~~

~~determination of the Indiana Board of Tax Review is included in the Appendix to these rules. If the petitioner does not include in the petition a request that the Indiana Board of Tax Review prepare a certified copy of the agency record, the petitioner shall file a separate request for such record under Section (E) of this rule.~~

(C) Appeals from final determinations of the Department of Local Government Finance.

An original tax appeal from a final determination of the Department of Local Government Finance is commenced by filing a petition in the Tax Court.

(D) Copies of petitions. Copies of the petition required under Section B of this rule shall be served upon the following:

- ~~_____ (1) the chairperson of the Indiana Board of Tax Review;~~
- ~~_____ (2) the Attorney General;~~
- ~~_____ (3) each party to the administrative proceedings before the Indiana Board of Tax Review that led to the final determination under review;~~
- ~~_____ (4) if the administrative proceeding before the Indiana Board of Tax Review involved an appeal from a determination of a county property tax assessment board of appeals, the secretary of such county property tax assessment board of appeals; those persons designated by any applicable statute.~~ A petitioner complies with this rule by serving a copy of the petition in the manner provided by Trial Rule 5(B). Copies of the petition shall be served upon public officers only in their official capacities.

(E) Filing the record of judicial review. In original tax appeals filed under Section (B) of this rule, the petitioner shall request the Indiana Board of Tax Review to prepare a certified copy of the agency record within thirty (30) days after filing the petition. A request included as part of the petition filed under Section (B)(7) of this rule satisfies this requirement. The petitioner shall transmit a certified copy of the record to the Tax Court within thirty (30) days after having received notification from the Indiana Board of Tax Review that the record has been prepared.

(F) Enjoining the collection of a tax. If the petitioner wishes to enjoin the collection of a tax pending the original tax appeal, there must be included with the original tax appeal a petition to enjoin the collection of the tax, which petition must include a summary of:

- ~~(1) the issues that the petitioner will raise in the original tax appeal; and~~
- ~~(2) the equitable considerations for which the Tax Court should order the collection of the tax to be enjoined.~~

(G) Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G)(1). Documents and information excluded from public access pursuant to Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G).

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Rule 18. Mediation

(A) Purpose. The purpose of a mediation of any matter before the Tax Court is set forth in Rule 2.1 of the Indiana Rules for Alternative Dispute Resolution, which is hereby incorporated by reference.

(B) Mediation Order. At any time, the Tax Court may on its own motion or upon motion of any party refer an original tax appeal to mediation. Any original tax appeal referred to mediation shall be subject to this Rule unless the parties by agreement elect to be subject to the Indiana Rules for Alternative Dispute Resolution without regard to this Rule. At all times during the course of any mediation the appeal remains within the jurisdiction of the Tax Court.

(C) Case Selection/Objection to Mediation Order. After a case has been referred for mediation, a party may object by filing a written objection with the Tax Court within fifteen (15) days after

the order of referral is entered. The party must specify the grounds for objection. The Tax Court shall promptly consider the objection and any response and determine whether the litigation should then be mediated or not. In this decision, the Tax Court shall consider the willingness of the parties to mutually resolve their dispute, the ability of the parties to participate in the mediation process, the need for discovery and the extent to which it has been conducted, and any other factors which affect the potential for fair resolution of the dispute through the mediation process. If a case is ordered for mediation, the case shall remain on the court docket and the trial calendar.

(D) Selection of Mediator/Costs of Mediation. Within fifteen (15) days of an order referring a case to mediation, the parties may choose a mediator from the pool of senior judges who have been certified by the Indiana Judicial Nominating Commission. In the event a mediator is not selected by agreement, the court will designate three (3) senior judges who have been certified by the Indiana Judicial Nominating Commission who are willing to mediate cases before the Tax Court. Alternately, each side shall strike the name of one mediator. The side initiating the lawsuit will strike first. The mediator remaining after the striking process will be deemed the selected mediator. The senior judge serving as the mediator shall be paid by the Division of State Court Administration pursuant to Supreme Court Administrative Rule 5. The senior judge serving as the mediator need not be a registered mediator as provided in Indiana Rules for Alternative Dispute Resolution, rule 2. Mediation shall occur at no cost to the parties.

(E) Mediation Procedure, Rules of Evidence, Discovery, Sanctions, Confidentiality. The mediation shall be conducted pursuant to the procedures, rules of evidence, discovery, sanctions, and confidentiality provisions set forth in Rules 2.7 , 2.8, 2.9, 2.10, and 2.11 of the Indiana Rules for Alternative Dispute Resolution which are hereby incorporated by reference; provided, however, that the provision of Rule 2.7(B)(2) requiring attorneys or representatives of a party with settlement authority to be present at each mediation shall not apply.

(F) Termination of Mediation. The mediation shall terminate as provided in Rule 2.7(D) of the Indiana Rules for Alternative Dispute Resolution as incorporated by reference in (E) above provided that the Tax Court may, at any time, upon good cause shown and upon a hearing on the issue, terminate the mediation.

Rule 19. Special rules

The judge of the Tax Court may from time to time make and amend rules governing practice before it not inconsistent with these rules. In all cases not provided for by rule, the Tax Court may regulate its practice in any manner not inconsistent with these rules. Two (2) copies of all special rules shall be furnished to the clerk and to the Office of the Administrator of State Courts.

Rule 19 20. Effective date

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Rule 20 21. Title

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These amendments shall take effect January 1, 2009.

The Clerk of this Court is directed to forward a copy of this Order to the Clerk of each Circuit Court in the State of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this _____ day of September, 2008.

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.